

Notice of Decision and Reasons for Decision

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| Applicant: | 'FP5' |
| Agency: | Department of Government Services |
| Decision date: | 19 April 2024 |
| Exemption considered: | Section 30(1) |
| Citation: | 'FP5' and Department of Government Services (Freedom of Information) [2024] VICmr 27 (19 April 2024) |

FREEDOM OF INFORMATION – early draft – no quality assurance – compliance framework – internal procedure document – not contrary to public interest to disclose

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision.

I am not satisfied the document is exempt from release under section 30(1). It is therefore to be provided to the Applicant in full.

Please refer to the end of this decision for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

If review is not sought at VCAT, this decision takes effect when the Agency's review period expires.

My reasons for decision follow.

Sean Morrison
Information Commissioner

19 April 2024

Reasons for Decision

Background to review

1. The Applicant made a request to the Department of Treasury and Finance seeking access to a copy of its 'Compliance Policy and Procedure documents for all applicable law'.
2. The request was transferred to the Agency.
3. During the review, the Applicant clarified their request, advising that they are not requesting a copy of the document they had already received under a previous FOI request, rather, they are seeking an updated version of the document.
4. The Agency identified a draft document titled 'Compliance Management Framework and Procedure' and refused access to it in full under section 30(1).

Review application

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. I have examined a copy of the document subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered the relevant communications and submissions received from the parties.
9. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
10. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Review of exemptions

Section 30(1) – Internal working documents

11. Section 30(1) has three requirements:
 - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and

- (c) disclosure of the matter would be contrary to the public interest.
12. The exemption does not apply to purely factual material in a document.¹
 13. I am satisfied the document contains matter in the nature of opinion, advice and recommendations prepared by an agency officer, as it is a draft document setting out recommendations for changes to the Agency's compliance framework.
 14. Further I am satisfied the document was prepared in the course of the deliberative processes of the Agency. I therefore must consider whether disclosure would be contrary to the public interest. In doing this, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.
 15. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:²
 - (a) the right of every person to gain access to documents under the FOI Act;
 - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
 - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
 - (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision-making processes and whether the underlying issues require greater public scrutiny.

16. The Agency submits:

In relation to whether disclosure of the document would be contrary to the public interest, the relevant document is a draft version, and disclosure would not clearly or accurately represent the final version of the policy, and DGS is still at the consultation stage in the deliberative process. Further, deciding whether disclosure is contrary to the public interest involves balancing the public interest in open government against

¹ Section 30(3).

² *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

the principles of responsible and functional government. On balance, I am satisfied that the public interest would not be promoted by disclosing the internal working document in question.

17. I note the document is marked draft. I also note:
 - (a) The document appears to be a preliminary draft. It is marked version '0.1' and does not include any information regarding its author or business or document owner, nor are there any mark ups or comments in the document.
 - (b) The Agency's submission that there has been no oversight, review, or quality assurance applied to the document and that work had ceased on it since the machinery of government changes.
 - (c) The current version of the document has been released to the Applicant as a result of a previous FOI request.
18. While these are factors for me to consider, ultimately the FOI Act requires that I must be satisfied disclosure must be contrary to the public interest.
19. I have determined that it would not be contrary to the public interest for the following reasons:
 - (a) I do not consider the information contained in the document is sensitive.
 - (b) The document is clearly a draft, and the Applicant is capable of understanding it will be subject to change.
 - (c) I am advised there is no other operational document that has replaced this draft.
 - (d) Given its generic nature, I do not consider there are strong reasons to consider the public interest weighs in favour of disclosure; however, I also cannot be satisfied disclosure of the document would be contrary to the public interest, as I do not consider disclosure would have any effect on the Agency, the broader public sector, or members of the public.
 - (e) As described above, the FOI Act provides that where discretion applies, the Act is to be read to promote disclosure. That is, all government documents should be made available unless it is clear that they are exempt or excluded under a provision of the FOI Act.
20. As I am not satisfied disclosure would be contrary to the public interest, the document is not exempt under section 30(1).

Conclusion

21. On the information before me, I am not satisfied section 30(1) or any other exemption applies to the document. It is therefore to be provided to the Applicant in full.

Timeframe to seek a review of my decision

22. If the Agency is not satisfied with my decision, it is entitled to apply to VCAT for it to be reviewed.³
23. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁴
24. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
25. The Agency is required to notify the Information Commissioner in writing as soon as practicable if it applies to VCAT for a review of my decision.⁵

When this decision takes effect

26. My decision does not take effect until the Agency's 14 day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

³ Section 50(3D).

⁴ Section 52(9).

⁵ Section 50(3F).